

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 24,017

In re: 6101 16th Street, N.W. Unit 911

Ward Four (4)

BENJAMIN HART

MARY HART

Tenants/Appellants

v.

OLIVER COWAN, JR.

RITTENHOUSE LTD PARTNERSHIP,

Housing Provider/Appellee

ORDER DISMISSING APPEAL

May 9, 2008

EDWARDS, COMMISSIONER. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Housing Regulation Administration (HRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE § 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE § 2-501-510 (2001), and the District of Columbia Municipal Regulations DCMR, 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On September 22, 1995, fifteen tenants, including Benjamin Hart and Mary Hart of the housing accommodation located at 6101 16th Street N.W., filed Tenant Petition (TP) 24,017. The tenants made the following claims in their petition: 1) the notices for the

1.7% rent increase dated August 28, 1995 did not conform with requirements of the Rental Housing Act of 1985; 2) the rent ceilings in the notices of rent increase were fabricated and erroneous; 3) the rent increase was taken while the units were not in substantial compliance with housing code regulations; 4) the petitioners received a judgment for monetary award in Civil Action No. 9798-91 based upon breach of contract; 5) the tenants filed TP 22,784 on August 28, 1991 with RACD regarding an illegal 2 percent increase and asserted that no decision could be rendered in TP 24,017 until TP 22,784 was decided.

Hearing Examiner Thomas Word held a hearing in the captioned matter, but retired before rendering a decision. That hearing was a preliminary procedural hearing. Hearing Examiner Carl Bradford convened the RACD hearing on October 7, 2003. He indicated that his decision would be based upon the hearing over which he presided, solely. None of the parties objected to this determination. The hearing examiner stayed the proceedings with respect to all tenants, except pro se petitioners Benjamin and Mary Hart on request of tenant counsel Bernard A. Gray, Sr., and Intervenor's counsel, Eric Von Salzen. Tenants represented by Mr. Gray pursued settlement agreements. The case put on by the Intervenor related only to tenant petitioners Benjamin and Mary Hart.

On April 9, 2004, the hearing examiner issued the decision and order, which contained the findings of fact and conclusions of law. In that decision, the hearing examiner noted that his findings were based solely upon the record in the hearing before him. Appellants did not raise any objection. A hearing on the appeal was held on April 26, 2005.

On April 21, 2008, Appellants Benjamin and Mary Hart filed a Motion to Withdraw in the Commission's Office. Their Motion requested that their portion of the tenant petition be dismissed with prejudice. A copy of an April 17, 2008 letter from the Peter N.G. Schwartz Management Company, Inc. confirming agreement on a rent dispute was attached to the Motion. The Appellants Motion to Withdraw together with the attached letter from the Housing Provider shall be construed as a settlement agreement.

It should be noted that the Motion to Withdraw was received prior to the Commission's issuance of a decision and order in the instant case.

II. THE LAW

In Williams Mgmt. Co. v. Richardson, et. al., TPs 24,532 & 24,534 (RHC Dec. 17, 1999) the Commission stated:

Settlement of litigation is to be encouraged. The Court in Proctor v. District of Columbia Rental Hous. Comm'n, 484 A.2d 54 (D.C. 1984) required the Commission to consider: 1) the extent to which the settlement enjoys support among the affected Tenants, 2) the potential for finally resolving the dispute, 3) fairness of the proposal to all affected persons, 4) saving of litigation costs to the parties, and 5) difficulty of arriving at prompt final evaluation of merits, given complexity of law, and delays inherent in administrative and judicial process. Id. at 548. When a case is settled on appeal, the pending litigation will be considered moot, and further court action is unnecessary. Milar Elevator Co., v. District of Columbia Dep't of Employment Serv., 704 A.2d 291 (D.C. 1997). The Commission is required to review all settlement agreements that dispose of appeals. Where the parties have agreed that a settlement agreement would be dispositive on the appeal and underlying tenant petition, the Commission has approved such requests and dismissed the petition. Kenmore Apartments Joint Venture v. Tenants of 5414 Connecticut Ave., N.W., CI 20,724 & TP 24,055 (RHC Feb. 8, 1999).

Id. at 2.

III. THE ISSUES

A. Whether to Grant the Motion to Withdraw.

The settlement agreement is supported by Tenant-Appellants and the Housing Provider. There is finality as to the resolution of all issues between the parties. Moreover, both Tenant-Appellants and Housing Provider-Appellee benefit from the settlement agreement, thereby making the agreement fair and equitable on both sides. Both parties shall benefit. The settlement agreement saves further litigation costs to both parties. The Agreement addresses the claims enumerated in TP 24,017. The claims concern a rent dispute. Unnumbered paragraph two (2) of the Tenant-Appellants Motion to Withdraw cites the content of the April 17, 2008 letter received from the Housing Providers:

“Dear Mr. and Mrs. Hart, your conversation with Mrs. Reitta Turner regarding the Agreement on your rent dispute from the Rittenhouse Apartment. We will wipe out the balance of your account ledger with the Rittenhouse Apartment to a zero balance. But you will need to do your part of stopping the Petitions Agreement that you have file [sic] in the DC Supreme Court. [sic] You will receive a rental ledger once the adjustments have been made on your account....”.

B. Whether to Dismiss the Tenant Petitions with Prejudice and Vacate the Hearing Examiner’s Decision.

The Tenants have the right to withdraw their claims in the tenant petition. Sup. Ct. R. 41(a) states:

(a) Voluntary dismissal: Effect thereof.

(1) By Plaintiff, ...by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice..., (emphasis added.)

In the instant case, both parties have agreed upon settlement of the underlying issues in the tenant petition. Tenant Appellants have stated in their Motion To Dismiss that the matter should be dismissed with prejudice. (emphasis added.) The Commission grants the Motion to Dismiss and approves the settlement acknowledged within the

Motion and supporting document. Absent the Tenant Petition, there is no rational basis for the Hearing Examiner's decision. Therefore, the Hearing Examiner's decision is vacated in accordance with the terms set forth in the aforementioned Motion to Dismiss and supporting document.

IV. CONCLUSION

The appeal in this case is dismissed as moot, because the parties have settled all issues, the underlying tenant petition is dismissed with prejudice, and the hearing examiner's decision is vacated.

SO ORDERED.


DONATA L. EDWARDS, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission...may seek judicial review of the decision ...by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W. 6th Floor
Washington, DC 20001
(202) 879-2700

CERTIFICATE OF SERVICE

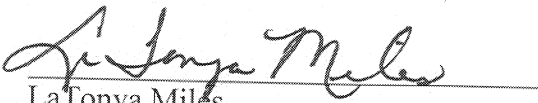
I certify that a copy of the foregoing Decision and Order in TP 24,017 was mailed postage prepaid by priority mail, with delivery confirmation on this 9th day of May, 2008 to:

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